

Supreme Court, U. S.

FILED

MAR 6 1978

IN THE

Supreme Court of the United States

W. DODAK, JR., CLERK

October Term, 1977

No. 77-1166

MILTON CLARK, FREDERICK W. ROST, ST. REGIS APARTMENTS, LTD., a California Limited Partnership; MELVIN BALSER, Managing Agent, on Behalf of Themselves and All Others Similarly Situated.

PHILADELPHIA GAS WORKS,

Plaintiff-Intervenor, Petitioner,

v.

GULF OIL CORPORATION

and

TEXAS EASTERN TRANSMISSION CORPORATION.

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Third Circuit.

**BRIEF FOR RESPONDENTS MILTON CLARK,
ET AL., IN SUPPORT.**

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Of Counsel:

MESIROV, GELMAN, JAFFE, CRAMER & JAMIESON.

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**PHILADELPHIA GAS WORKS,
Plaintiff-Intervenor, Petitioner,
v.**

**GULF OIL CORPORATION
and
TEXAS EASTERN TRANSMISSION CORPORATION.**

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.**

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**BRIEF FOR RESPONDENTS
MILTON CLARK, ET AL., IN SUPPORT.**

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INTRODUCTION.

The Petitioner in this case, Philadelphia Gas Works (PGW), is an intervenor-plaintiff and co-appellant in the court below. Respondents Milton Clark, et al., who have

throughout these proceedings acted as the representatives of the customers of PGW, were the original plaintiffs in the district court and were co-appellants in the court of appeals. The interests of PGW and of its customers are, in this proceeding, substantially identical. PGW's interests, in fact, derive from the rights of its customers, because they are the ones harmed by Gulf's default, not PGW. PGW, an arm of the City of Philadelphia, must, by ordinance, recover all of its costs of operation from its rate-paying customers. Any and all increases in costs of gas paid by PGW will therefore be borne finally by its customers. Respondents therefore respectfully suggest that the proper question to be decided is as phrased below.

**COUNTER-STATEMENT OF QUESTION
PRESENTED.**

Whether an injured ultimate consumer has a private cause of action for relief against a producer of natural gas when that producer has violated the provisions of the Natural Gas Act.

REASONS FOR GRANTING THE WRIT.

Petitioner PGW has ably set forth in its petition the reasons for granting review of the decisions below, and answering in the affirmative the question stated above, and its customers, Respondents herein, will not now repeat them. We agree fully with all of the arguments made by PGW, but would respectfully point out that the proper beneficiaries of these arguments are the ultimate consumers whom PGW serves, not PGW as an entity. Assuming that PGW's petition is read in this light, its customers can add little.

CONCLUSION.

For all the reasons set forth in PGW's petition, a writ of certiorari should be granted to review the decision of the court below and decide the question presented as modified herein.

Respectfully submitted,

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